

FILED

AUG 29 2018

Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

LENRAY JESS TWO TWO,

Defendant/Movant.

Cause No. CR 04-155-BLG-SPW
CV 18-033-BLG-SPW

ORDER DISMISSING § 2255
MOTION AND DENYING
CERTIFICATE OF
APPEALABILITY

This case comes before the Court on Defendant/Movant Lenray Jess Two Two's motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Two Two is a federal prisoner proceeding pro se.

On May 19, 2005, Two Two was sentenced to serve 21 months in prison, to be followed by a three-year term of supervised release. *See* Minutes (Doc. 14). Two Two fully discharged the sentence on September 23, 2008. *See* Report and Order (Doc. 17). As Two Two was not in custody in this case when he filed the instant § 2255 motion in February 2018, the Court lacks jurisdiction to consider the motion. *See Maleng v. Cook*, 490 U.S. 488, 490-94 (1989) (per curiam).

A certificate of appealability is denied because the procedural ruling is controlled by *Cook* and because Two Two's allegations do not support an inference that he was deprived of a constitutional right. *See* 28 U.S.C. §

2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).


Accordingly, IT IS HEREBY ORDERED:

1. Two Two's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 18) is DISMISSED for lack of jurisdiction.

2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Two Two files a Notice of Appeal.

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 18-33-BLG-SPW are terminated and shall close the civil file by entering judgment of dismissal.

DATED this 29th day of August, 2018.



Susan P. Watters
United States District Court